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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

APR 14 1992

Federal Communications Commission
Office of the Secretary

In re Application of)

SAMPLE BROADCASTING CO., L.P.)
Eldon, Iowa)

For Construction Permit)

92316

File No. BPH-911010MA

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APR 15 1992
FM EXAMINERS

PETITION TO DENY

Rivertown Communications Company, Inc., ("Rivertown"), by its attorneys, pursuant to Section 73.3584 of the Commission's Rules and its Public Notice of March 12, 1992 (Report No. NA-157), hereby petitions the Commission to deny the above-captioned application of Sample Broadcasting Co., L.P. ("Sample") for a construction permit for a new FM broadcast station at Eldon, Iowa.

I. Statement of Interest

Rivertown and Sample are mutually exclusive applicants for a construction permit to establish a new commercial FM broadcast station on Channel 282C3 in Eldon, Iowa.¹ Thus, Rivertown is a "party in interest" within the meaning of Section 309(d)(1) of the Communications Act of 1934, as amended.

II. Basis for Petition

A. The Sample Application

Sample's application reflects a classic two-tiered entity with which the Commission has by now become quite familiar: A

¹ That channel was assigned to Eldon upon the petition of Rivertown. See 6 FCC Rcd 4516 (1991).

limited partnership whose sole general partner (Carmela Sample) is a minority female claiming service area residence and integration credit as proposed general manager (although her highest management position has been as a news director), and whose sole limited partner (Bruce Linder) is a male with multiple broadcast interests residing in Spicer, Minnesota, several hundred miles away from Eldon. Section III of the application identifies Bruce Linder as the sole source of the \$300,000 financing required for the proposed Eldon station.

Bruce Linder owns 25% of the stock of O-Town Communications, Inc., licensee of Station KKSI-FM, Eddyville, Iowa,² and his father, John Linder, owns 55% of O-Town's stock. The remaining 20% is owned by Mark McVey.³ Ms. Sample has been employed by

² Eddyville is located approximately 27 miles northwest of Eldon. The city of Ottumwa is roughly halfway between Eddyville and Eldon. Ottumwa is within the city-grade contour of KKSI-FM, and the proposed city-grade contour of Rivertown, but lies beyond the proposed city-grade contour of Sample.

³ Mr. McVey owned 100% of that stock when O-Town's application was filed in March 1988, and when it was granted in December 1989 (Exhibit A). However, by the time O-Town filed its initial ownership report on August 17, 1990 (as of June 29, 1990), McVey's interest had been reduced to 51%, and the other 49% was owned by John Linder (20%) and his father Don Linder (29%); see Exhibit B. John Linder had replaced McVey as President of the corporation. In November 1990, McVey contracted to sell to Donald Linder another 31% of the stock of O-Town, reducing McVey to just 20%. The total sale price for that interest was just \$1,240; See Exhibit C. As of March 8, 1991 (shortly following the February 15, 1991 grant of the application for transfer of control from McVey to Donald Linder (File No. BTCH-901220HW), O-Town reported that Donald Linder now held 75% of its stock (having apparently acquired 15% from his son John, as well as the 31% from McVey); See Exhibit D. In O-Town's annual ownership report dated October 14, 1991, Bruce Linder first appeared as a principal, with 25% of O-Town's stock, acquiring John's remaining 5% as well as 20% from his father Donald. See Exhibit E.

KKSI-FM since October 1990 as News Director (Application, Exhibit IV-B), a position she proposes to resign if Sample's application is granted (Id., Exhibit II-C).

While the foregoing facts might merely evidence the "'strange and unnatural' business arrangements"⁴ which the Commission's comparative hearing policies tend to encourage, Rivertown, through its president David W. Brown, has learned from Mr. McVey both directly and indirectly that the Linder family's interest in the Sample application for Eldon goes far deeper than Bruce Linder's limited partnership interest would indicate. As reflected in David Brown's affidavit (Exhibit F hereto⁵), Mr. McVey has volunteered to him in several conversations over the past few months that the Sample application was designed to delay competition to the Eddyville station from an Eldon station; to avoid city-grade contour overlap between Eldon and KKSI-FM in order to permit Bruce Linder to have cognizable ownership interests in both stations;⁶ and ultimately to combine the Eddyville and Eldon operations in a simulcasting arrangement, so that -- as McVey put it to KKSI personnel in April 1991 (three

⁴ Bechtel v. F.C.C., ___ F. 2d ___ (D.C. Cir. 1992, Case No. 91-1112), Slip Opinion at 14; quoted with approval in Notice of Proposed Rulemaking in GC Docket No. 92-52, Reexamination of the Policy Statement on Comparative Broadcast Hearings, released April 10, 1992, at ¶15.

⁵ Exhibit F is a facsimile of Mr. Brown's executed affidavit. The original will be filed as a supplement hereto upon its receipt.

⁶ If Bruce Linder were to be a truly passive limited partner in Sample's Broadcast, his interest therein would not be

area of a combined Eldon-KKSI-FM operation; (2) reducing potential competition to KKSI-FM from the Eldon station, particularly within the principal population center of Ottumwa; and (3) eliminating a potential bar to common cognizable (i.e., voting power) ownership of both KKSI-FM and Sample's proposed Eldon station.

Mr. McVey's admission to Mr. Brown that Ms. Sample and her station would be under Bruce Linder's control (Exhibit F, ¶3) may have been only Mr. McVey's opinion. However, the validity of that opinion is supported by McVey's own experience in KKSI-FM. As set forth in note 3, supra, in less than one year after the initial KKSI grant, McVey was reduced from president and 100% owner of O-Town to vice-president and 20% owner, selling a controlling 31% interest for a paltry \$1,240 to Linder pater. If experience is any guide, Ms. Sample's nominal control of the applicant (if it has ever existed) will prove to be short-lived.

Finally, the concession by McVey that among the reasons for the Sample application was to delay a grant of Rivertown's Eldon application (Exhibit F, ¶3) supports the conclusion that Sample's application is a classic "strike" application, planned, nurtured, and financed by KKSI-FM and its principals. See, e.g., Roger S. Underhill, 22 RR 801 (1961); Blue Ridge Mountain Broadcasting Co., Inc., 37 FCC 791, 2 RR2d 511 (Rev.Bd. 1964); Al-Or Broadcasting Co., 37 FCC 917, 3 RR2d 889 (Rev.Bd. 1964); Grenco, Inc., 28 FCC 2d 166, 21 RR2d 560 (1971).

In view of the foregoing, Rivertown urges the Commission to set the Sample application for hearing on the following issues:

1. To determine whether the application of Sample Broadcasting was filed for the purpose, in whole or in part, of delaying action upon and grant of the application of Rivertown Communications Company, Inc.

2. To determine whether O-Town Communications, Inc., and/or any of its officers, directors, and stockholders, is a real party-in-interest to the application of Sample Broadcasting.

3. To determine the extent of the involvement of Bruce Linder in the planning and development of the application of Sample Broadcasting.

4. To determine the programming intentions of Sample Broadcasting, with particular reference to potential duplication of the programming of Station KKSI-FM.

5. To determine, in light of the evidence adduced under the foregoing issues, whether the application of Sample Broadcasting affirmatively misrepresents material facts, or knowingly conceals material facts.

6. To determine, in light of the evidence adduced under the foregoing issues, whether Sample Broadcasting possesses the basic qualifications to be a Commission licensee.

Rivertown further urges that the Commission name O-Town Communications, Inc., a party to this proceeding.

Respectfully submitted,

RIVERTOWN COMMUNICATIONS COMPANY, INC.

By:


Donald E. Ward

Donald E. Ward, P.C.
1201 Pennsylvania Ave., N.W.
Fourth Floor
P.O. Box 286
Washington, D. C. 20044-0286
(202) 626-6290

April 14, 1992

Code 30 PN: 5/4/82

Approved by OMB

APPLICATION FOR CONSTRUCTION PERMIT FOR
COMMERCIAL BROADCAST STATION

(carefully read instructions before filing form)
Return only form to FCC

For Commission Use Only

EXHIBIT A

Section I—GENERAL INFORMATION

1. Name of Applicant

"O"-TOWN COMMUNICATIONS, INC.

FEE NO:	0008322
FEE TYPE:	MEN
FEE AMT:	\$1800
ID SEQ:	05

File No.

880303MC

MAR 7 12 20 AM '88

AUDIO SERVICES
DIVISION

City

OTTUMWA

State

IA

ZIP Code

52501

Telephone No. (Include Area Code)

(515) 682-0498

Send notices and communications to the following named person at the address below:

Name

Mark A. McVey

Street Address or P.O. Box

620 Lake Road

City

Ottumwa

RECEIVED

880303

ZIP Code

52501

Telephone No. (Include Area Code)

(515) 682-0498

2. This application is for:

☐

AM
FCC

☒

FM

☐

TV

(a) Channel No. or Frequency:

268C2 101.5

(b) Principal Community:

City

Eddyville

State

Ia.

(c) Check one of the following boxes:

☒

Application for NEW station

☐

MAJOR change in licensed facilities; call sign:

NA

☐

MINOR change in licensed facilities; call sign:

NA

☐

MAJOR modification of construction permit; call sign:

NA

File No. of Construction Permit:

N/A

☐

MINOR modification of construction permit; call sign:

NA

File No. of Construction Permit:

N/A

☐

AMENDMENT to pending application; Application file number:

NA

NOTE: It is not necessary to use this form to amend a previously filed application. Should you do so, however, please submit only Section I and those other portions of the form that contain the amended information.

3. Is this application mutually exclusive with a renewal application?

☐

Yes

☒

No

If Yes, state:

N/A

Call letters:

Community of License:

City

State

LEGAL QUALIFICATIONS

of Applicant

"O"-Town Communications, Inc.

1. Applicant is: (check one block below)

☐

Individual

☐

General partnership

☒

For-profit corporation

☐

Other

☐

Limited partnership

☐

Not-for-profit corporation

Exhibit No.

N/A

2. If the applicant is an unincorporated association or a legal entity other than an individual, partnership, or corporation, describe in an Exhibit the nature of the application.

4. List the applicant and, if other than a natural person, its officers, directors, stockholders and partners with attributable interests. column for each individual or entity. Attach additional pages if necessary.

(Read carefully—The numbered items below refer to line numbers in the following table.)

1. Name and residence of the applicant and, if applicable, its officers, directors, stockholders, or partners (if other than individual also show name, address and citizenship of natural person authorized to vote the stock). List the applicant first, officers next, then directors and, thereafter, remaining stockholders and partners.
2. Citizenship.
3. Office or directorship held.
4. Number of shares or nature of partnership interests.
5. Number of votes.
6. Percentage of votes.
7. Other existing attributable media interests subject to the multiple ownership restrictions of Sections 73.3555 and 76.501 of the Commission's Rules, including the nature and size of such interests.
8. All other ownership interests of 5% or more, whether or not attributable, as well as any corporate officership or directorship in broadcast, cable, or newspaper entities in the same market or with overlapping signals in the same broadcast service, as described in Sections 73.3555 and 76.501 of the Commission's Rules, including the nature and size of such interests and the positions held.

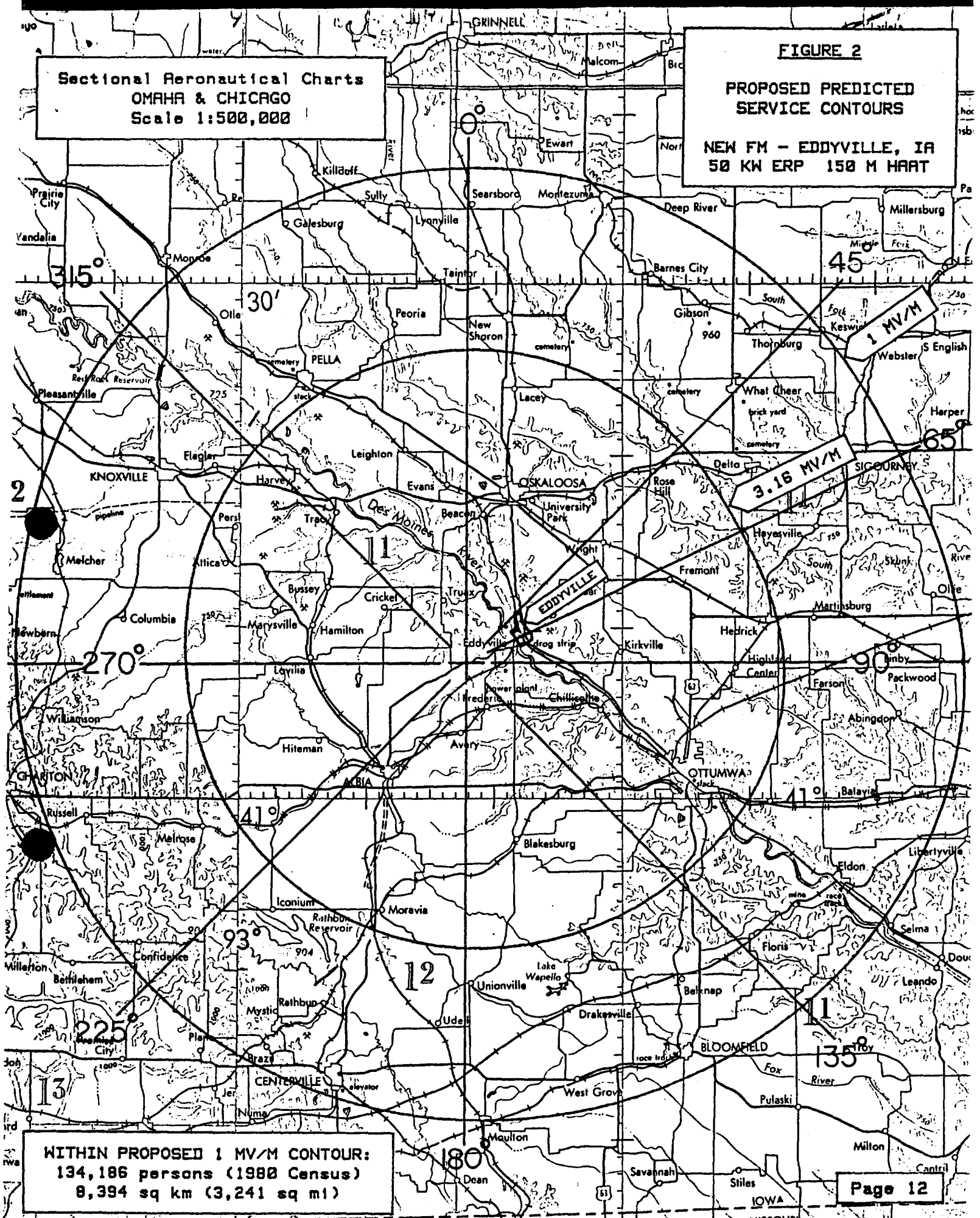
1.	"O"Town Communications, Inc. 620 Lake Road Ottumwa, Ia. 52501	Mark A. McVey 620 Lake Road Ottumwa, Ia. 52501	JOHN D. COBLER 211 RICHMOND OTTUMWA, IOWA 52501
2.	N/A	U.S.	U.S.
3.	N/A	PRESIDENT/DIRECTOR	DIRECTOR
4.	N/A	44 SHARES	0 SHARES
5.	N/A	44 VOTES	0 VOTES
6.	N/A	100%	0%
7.	N/A	Chief Engineer, KMCD, Fairfield, IA	NONE
8.	N/A	None	NONE

Sectional Aeronautical Charts
OMAHA & CHICAGO
Scale 1:500,000

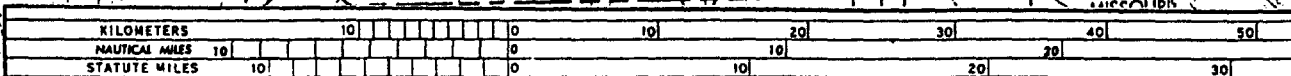
FIGURE 2

PROPOSED PREDICTED
SERVICE CONTOURS

NEW FM - EDDYVILLE, IA
50 KW ERP 150 M HAAT



WITHIN PROPOSED 1 MV/M CONTOUR:
134,186 persons (1980 Census)
8,394 sq km (3,241 sq mi)



Approved by OMB
3080-0010
Expires 04/30/89

United States of America
Federal Communications Commission
Washington, D. C. 20554

Ownership Report

NOTE: Before filling out this form, read attached instructions

Section 310(d) of the Communications Act of 1934 requires that consent of the Commission must be obtained prior to the assignment or transfer of control of a station license or construction permit. This form may not be used to report or request an assignment of license/permit or transfer of control (except to report an assignment of license/permit or transfer of control made pursuant to prior Commission consent).

1. All of the information furnished in this Report is accurate as of

June 29, 1990

(Date must comply with Section 73.3615(a), i.e., information must be current within 60 days of the filing of this report, when 1(a) below is checked.)

This report is filed pursuant to instruction (check one)

1(a) ☐ Annual 1(b) ☐ Transfer of Control or Assignment of License 1(c) ☒ Other

for the following stations:

Call Letters	Location	Class of service
KKSI	Eddyville, IA	FM

2. Give the name of any corporation or other entity for whom a separate Report is filed due to its interest in the subject licensee (See Instruction 3):

none

3. Show the attributable interests in any other broadcast station of the respondent. Also, show any interest of the respondent, whether or not attributable, which is 5% or more of the ownership of any other broadcast station or any newspaper or CATV entity in the same market or with overlapping signals in the same broadcast service, as described in Sections 73.3555 and 76.501 of the Commission's Rules.

none

CERTIFICATION

I certify that I am President

(Official title, see Instruction 1)

of "O"-Town Communications, Inc.

(Exact legal title or name of respondent)

that I have examined this Report, that to the best of my knowledge and belief, all statements in the Report are true, correct and complete.

(Date of certification must be within 60 days of the date shown in Item 1 and in no event prior to Item 1 date):

Federal Communications Commission
Office of the Secretary

John R. Linder
(Signature)

7/31/1990
(Date)

John R. Linder

Telephone No. of respondent (include area code):

(515) 682-0498

Any person who willfully makes false statements on this report can be punished by fine or imprisonment. U.S. Code, Title 18, Section 1001.

Name and Post Office Address of respondent:

"O"-Town Communications, Inc.
620 Lake Road
Ottumwa, IA 52501

4. Name of entity, if other than licensee or permittee, for which report is filed (see Instruction 3):

none

5. Respondent is:

- ☐ Sole Proprietorship
☒ For-profit corporation
☐ Not-for-profit corporation
☐ General Partnership
☐ Limited Partnership
☐ Other: _____

If a limited partnership, is certification statement included as in Instruction 4?

☐ Yes ☐ No

gr. 1401184

BPH-880303MC

50-09/13/90

6. List all contracts and other instructions required to be filed by Section 73.3613 of the Commission's Rules and Regulations. (Only licensees, permittees, or a reporting entity with a majority interest in or that otherwise exercises de facto control over the subject licensee or permittee shall respond.)

Description of contract or instrument	Name of person or organization with whom contract is made	Date of Execution	Date of Expiration

7. Capitalization (Only licensees, permittees, or a reporting entity with a majority interest in or that otherwise exercises de facto control over the subject licensee or permittee, shall respond.)

Class of Stock (preferred, common or other)	Voting or Non-voting	Number of Shares			
		Authorized	Issued and Outstanding	Treasury	Unissued
Common	Voting	1,000,000	100	-0-	900,000

Remarks concerning family relationships, attribution exemptions and certifications: (See Instructions 4, 5 and 6)

Don Linder and John Linder are father and son.

Line (Read carefully - The numbered items below refer to line numbers in the following table.)

1. Name and residence of officer, director, cognizable stockholder or partner (if other than individual also show name, address and citizenship of natural person authorized to vote the stock). List officers first, then directors and, thereafter, remaining stockholders and partners.
2. Citizenship.
3. Office or directorship held.
4. Number of shares or nature of partnership interest.
5. Number of votes.
6. Percentage of votes.
7. Other existing attributable interests in any other broadcast station, including nature and size of such interest.
8. All other ownership interests of 5% or more (whether or not attributable), as well as any corporate officership or directorship, in broadcast, cable, or newspaper entities in the same market or with overlapping signals in the same broadcast service, as described in Sections 76.8555 and 76.501 of the Commission's Rules, including the nature and size of such interests and the position held.

AUG 17 1990

1	(a)	(b)	(c) Federal Communications Commission Office of the Secretary
	Mark McVey Ottumwa, Iowa 52501	John Linder Mankato, MN 56001	Don Linder Mankato, MN 56001
2	U.S.	U.S.	U.S.
3	Vice President Director	President Director	Sec./Treasure Director
4	51	20	29
5	51	20	29
6	51%	20%	29%

EXHIBIT 1

John Linder has the following broadcast interests:

- 1.53% voting shareholder, officer and director of Minnesota Valley Broadcasting Company, licensee of KTOE (AM) Mankato, MN and KDOG (FM), North Mankato, MN.
- Minnesota Valley Broadcasting Company owns 100% of KMHL Broadcasting Company, licensee of KMHL (AM) and KKCK (FM) Marshall, MN.
- 20% voting shareholder, officer and director of Linder Broadcasting of Fort Dodge, Inc., licensee of KRIT (FM) Clarion, IA.
- 49% voting shareholder and director of Mad Hatter Broadcasting, Inc., licensee of KZEV (FM) Clear Lake, IA.

Donald Linder has the following broadcast interests:

- 92.3% voting shareholder, officer and director of Minnesota Valley Broadcasting Company, licensee of KTOE (AM) Mankato, and KDOG (FM) North Mankato, Minnesota.
- Minnesota Valley Broadcasting Company owns 100% of KMHL Broadcasting Company, licensee of KMHL (AM) and KKCK (FM) Marshall, Minnesota.
- 80% voting shareholder, officer and director of Linder Broadcasting of Fort Dodge, Inc., licensee of KRIT (FM) Clarion, IA.

EXHIBIT C

EXHIBIT A

[to BTCH-901220HW]

(2)

WHEREAS, consummation of this agreement is contingent upon the prior approval of the Federal Communications Commission;

NOW THEREFORE, in consideration of the premises and of the mutual covenant and agreements contained herein, the parties do hereby agree as follows:

1. ASSETS SOLD AND PURCHASED. On the Closing Date (as

2. Consideration.

(a) The purchase price which Buyer shall pay to Seller for the shares of stock purchased hereunder, as described herein, shall be \$1,240.00 (\$1,240.00) payable after approval by the F.C.C. and completion of sale.

3. Seller's Control Prior to Closing. Nothing contained in this Agreement shall give Buyer authority to vote the stock of Seller or assume control of Licensee prior to the time of closing.

4. Commission Consent. Performance of the closing obligations of the Seller and Buyer under this Agreement are subject to the occurrence of the express condition precedent that an action of the Commission granting, without hearing, its consent to the transfer of control of Licensee to the Buyer shall have been issued on or before nine (9) months from the date of tender for filing of an application on FCC Form 315 requesting such consent. If there is not an action granting the application within the period stated, or if for any reason during the period the Commission adopts an order designating for hearing the application of the Seller and Buyer for such consent, either party may forthwith terminate the Agreement upon giving ten (10) days prior written notice to the other party for such termination, in which event this Agreement shall have no further force or effect, and neither Seller nor Buyer shall be held in default, provided, however, that cancelling party shall not be in default of any provision of this Agreement at the time of cancellation. In the event, however, of the timely filing of any protest, appeal, or petition for reconsideration within thirty (30) days, or of the Commission's reconsideration on its own motion within forty

(40) days, of the date of issuance of the written order granting the assignment, notwithstanding that closing has already taken place as provided herein,

(c) That between the date of this Agreement and the closing the Seller will not, without written approval of Buyer, cause Licensee to:

(1) Enter into any contract or commitment extending beyond the date of Closing.

(2) Create or assume any loan, mortgage, pledge, debt, or other lien or encumbrance which would constitute a lien upon Licensee or the stock to be transferred.

(d) That the licenses held by Licensee are and will be in full force and effect at the time of closing.

(e) That all necessary documents and reports respecting the Licensee have been and will be filed with the FCC, up to the Closing Date.

8. Representations and Warranties of Buyer. Buyer represents, warrants, and agrees as follows:

(a) That Buyer will be on the date of closing legally, financially.

in any way except in writing. It shall be governed by and enforced in accordance with the laws of the State of Iowa.

10. Notice. All necessary notices, demands, and requests shall be deemed duly given if mailed by certified mail, postage prepaid, and addressed as follows:

If to the Seller, to:

Mark McVey
620 Lake Road
Ottumwa, Iowa 52501

KKSI(FM) Eddyville, Iowa
Transfer of Control

EXHIBIT B

Before the transfer of control of O-Town Communications, Inc., Mark McVey owned 51% of the voting stock. By selling 31 shares of his stock to Don Linder the control of O-Town Communications will transfer to Don Linder.

RECEIVED

MAR 11 1991

State of America
Federal Communications Commission
Washington, D. C. 20554

Ownership Report

NOTE: Before filling out this form, read attached instructions
Federal Communications Commission
Office of the Secretary

Section 310(d) of the Communications Act of 1934 requires that consent of the Commission must be obtained prior to the assignment or transfer of control of a station license or construction permit. This form may not be used to report or request an assignment of license/permit or transfer of control except to report an assignment of license/permit or transfer of control made pursuant to prior Commission consent).

I certify that I am President

(Official title, see Instruction 1)

of O-Town Communications, Inc.

(Exact legal title or name of respondent)

that I have examined this Report, that to the best of my knowledge and belief, all statements in the Report are true, correct and complete.

(Date of certification must be within 60 days of the date shown in Item 1 and in no event prior to Item 1 date):

X Donald D. Leides March 8 19 91
(Signature) (Date)

1. All of the information furnished in this Report is accurate as of

March 8 19 91

Telephone No. of respondent (include area code):

~~(507) 345-4538~~ (507) 345-4537

6. List all contracts and other instructions required to be filed by Section 73.3613 of the Commission's Rules and Regulations. (Only licensees, permittees, or a reporting entity with a majority interest in or that otherwise exercises de facto control over the subject licensee or permittee shall respond.)

Description of contract or instrument	Name of person or organization with whom contract is made	Date of Execution	Date of Expiration

7. Capitalization (Only licensees, permittees, or a reporting entity with a majority interest in or that otherwise exercises de facto control over the subject licensee or permittee, shall respond.)

Class of Stock (preferred, common or other)	Voting or Non-voting	Number of Shares			
		Authorized	Issued and Outstanding	Treasury	Unissued
COMMON	VOTING	1,000,000	100	-0-	999,900

Remarks concerning family relationships, attribution exemptions and certifications: (See Instructions 4, 5 and 6)

Don Linder and John Linder are father and son

Officers, directors, cognizable stockholders and partners. Use one column for each individual or entity. Attach additional pages, if necessary. See Instructions and 6.

Read carefully - The numbered items below refer to line numbers in the following table.)

Name and residence of officer, director, cognizable stockholder or partner (if other than individual also show name, address and citizenship of natural person authorized to vote the stock). List officers first, then directors and, thereafter, remaining stockholders and partners.

6. Percentage of votes.

7. Other existing attributable interests in any other broadcast station, including nature and size of such interest.

2. Citizenship.

3. Office or directorship held.

4. Number of shares or nature of partnership interest.

5. Number of votes.

8. All other ownership interests of 5% or more (whether or not attributable), as well as any corporate officership or directorship, in broadcast, cable, or newspaper entities in the same market or with overlapping signals in the same broadcast service, as described in Sections 73.3555 and 76.501 of the Commission's Rules, including the nature and size of such interests and the position held.

1	(a)	(b)	(c)
	Don Linder 117 Hannah Mankato, MN 56001	John Linder 126 Ridge Lane Mankato, MN 56001	Mark McVey 620 Lake Road Ottumwa, IA 52501
2	U.S.	U.S.	U.S.
3	President/Director	Sec./Treas./Director	Vice President/Director
4	75	5	20
5	75	5	20
6	75 %	5 %	20 %
7	See Exhibit 1	See Exhibit 1	none
8	none	none	none

**FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT
AND THE PAPERWORK REDUCTION ACT**

The solicitation of personal information requested in this Report is authorized by the Communications Act of 1934, as amended. The principal purpose for which the information will be used is to assess compliance with the Commission's multiple ownership restrictions. The staff, consisting variously of attorneys and examiners, will use the information to determine such compliance. If all the information requested is not provided, processing may be delayed while a request is made to provide the missing information. Accordingly, every effort should be made to provide all necessary information. Your response is required to retain your authorization.

EXHIBIT 1

Don Linder has the following broadcast interest:.